

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

December 9, 2011

A meeting of the Commission for Human Rights was held in the agency conference room on Friday, December 9, 2011. Present at the meeting were Commissioners Dr. John B. Susa, Chair, Iraida Williams, Alberto Aponte Cardona, Rochelle Bates Lee, Alton W. Wiley, Jr. and Camille Vella-Wilkinson. Absent was Commissioner Nancy Kolman Ventrone, Commissioner Susa called the meeting to order at 12:40 p.m.

A motion was made by Commissioner Vella-Wilkinson to approve the minutes of October 21, 2011. The motion to approve was seconded by Commissioner Williams and carried.

Status Report of Michael D. Évora, Executive Director

A written report was handed out. All new information is in bold print.

Case Production Report – Attached

Aged Case Report - Attached

Outreach Report - Attached

The Director reported that the Senate Finance Committee's fiscal advisor assigned to the Commission has asked for a meeting and a tour of the Commission offices. That meeting will be set for the third week of December.

STATUS REPORT – COMMISSIONERS:

The Commissioners discussed the pending request of Commissioners to be reappointed.

Legal Counsel reported on the death of Julius Michaelson, former Rhode Island Attorney General and husband of former Commissioner Rita Michaelson. A letter will be sent to Rita Michaelson expressing the Commissioners' condolences.

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OUTREACH:

Commissioner Vella-Wilkinson reported that she attended an event of the Rhode Island Affirmative Action Professionals and an NAACP dinner. Commissioner Wiley also attended the NAACP dinner. Commissioner Vella-Wilkinson reported that as part of her work in her fellowship at the Women's Fund of the Rhode Island Policy Institute, she is drafting proposed legislation to be submitted to the General Assembly which would provide the right to unpaid leave for time spent as a caregiver. The leave structure would resemble a hybrid of

the Family and Medical Leave Act and Temporary Disability Insurance. She is also working on the planning of a 2012 Women's History Month event focusing on the needs of elderly women. The Commissioner has also worked on a Warwick ordinance with the Disabled American Veterans Association to provide a discounted pool pass for disabled veterans.

STATUS REPORT - LEGAL COUNSEL by Cynthia M. Hiatt and Francis Gaschen.

LITIGATION: Report Attached. New information is in bold.

REGULATIONS: Counsel presented and discussed a proposed amendment to the Commission's Fair Housing regulations in accordance with HUD's request that the Commission clarify its regulations with respect to complainant representation in housing cases. After discussion, Commissioner Wiley moved that the Commission utilize the proposed language to start the process to adopt an amended regulation. The Motion was seconded by Commissioner Vella-Wilkinson and passed. The proposed amendment is attached.

HEARING SCHEDULE: Discussed.

DECISIONS:

Oliveira v. Furniture Mattress Warehouse, Inc et al.

Commissioners Bates Lee and Vella-Wilkinson found that the complainant proved that all of the respondents, except Mukesh Tandon, violated the Fair Employment Practices Act (FEPA). They agreed on damages and relief. A

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written decision will issue. Commissioner Kolman Ventrone will dissent with respect to damages and with respect to the finding that Carlos Montt violated the FEPA.

Salvador Pellerano et al v. Kuznetsov

Commissioners Susa, Wiley and Aponte Cardona discussed the case.

The Commissioners found that complainants Salvador Pellerano, Ivonne Martinez and Ivonne Torres proved that the respondent discriminated against them in housing because of their ancestral origin. Commissioners Susa and Wiley found that complainant Adalberto Torres did not prove that the respondent discriminated against him. Commissioner Aponte Cardona will dissent from that finding. The Commissioners agreed that Mr. Pellerano be awarded \$15,000 in compensatory damages, that Ms. Martinez be awarded \$5,000 in compensatory damages and that Ms. Torres be awarded \$2,500 in compensatory damages. Commissioners Susa and Wiley found that the respondent should pay a civil penalty of \$3,000.

Commissioner Aponte Cardona will dissent as it is his opinion that the respondent should pay \$10,000 as a civil penalty.

The meeting adjourned at 2:15 p.m. The next regular meeting has not been scheduled.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

Notes taken by: C. Hiatt

**PROPOSAL FOR AN AMENDMENT TO THE COMMISSION'S FAIR
HOUSING REGULATIONS
SUBMITTED TO THE COMMISSIONERS AT THEIR MEETING ON
DECEMBER 9, 2011**

**2002. Processing of Charges under Title 34,
Chapter 37.**

A) Procedures:

1) the procedures set forth in the Rules 1 – 17 of the Commission Rules and Regulations shall apply with respect to charges filed under Title 34, Chapter 37 as provided in Rules 1 – 17 of the Commission Rules and Regulations and as applicable;

B) Upon the filing of a charge:

1) the Commission will serve notice upon the complainant acknowledging such filing and advising the complainant of the time limits and choice of forums provided in the Act;

2) the Commission shall, not later than ten (10) days after such filing, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of such respondent under the Act, together with a copy of the original charge;

3) each respondent may file, not later than ten (10) days after receipt of notice from the Commission, an answer to such charge;

4) the Commission shall commence an investigation before the thirtieth (30th) day after the receipt of the charge of the alleged discriminatory housing practice and complete such investigation within one hundred (100) days after the filing of the charge, unless impracticable to do so;

5) if the Commission is unable to complete the investigation within one hundred (100) days after the filing of the charge, the Commission shall notify the complainant and respondent in writing of the reasons for not doing so;

6) the Commission shall make final administrative disposition of a

charge within one year of the filing of the charge, unless impracticable to do so;

7) if the Commission is unable to make final administrative disposition of a charge within one year of the filing of the charge, the Commission shall notify the complainant and respondent in writing of the reasons for not doing so;

8) in addition to the right to sue procedures set forth in Rule 17 of the Commission Rules and Regulations, when a complaint issues after a finding of probable cause, any party may elect to have the claims asserted in that complaint decided in a civil action in lieu of an administrative hearing. The election must be made not later than twenty (20) days after the receipt by the electing person of service of the complaint. The person making such election shall give notice of doing so to the Commission, the attorney general, and to all other complainants and respondents to whom the charge relates; and

9) if an election is made as discussed above in Rule 2002(B)(8) of the Commission Rules and Regulations:

(a) the complainant, the Commission or the attorney general may commence and maintain a civil action on behalf of the aggrieved person in the Superior Court as provided in Section 28-5-28 within ninety (90) days after receipt of notice of an election. The Commission shall commence and maintain an action seeking appropriate relief for an aggrieved party and vindication of the public interest, if neither the attorney general nor the complainant has commenced a civil action on behalf of the aggrieved person. If the complainant commences a civil action on behalf of the aggrieved

person, the Commission shall intervene in the case on behalf of the public interest. If the attorney general commences a civil action on behalf of the aggrieved person, the Commission may intervene on behalf of the public interest;

(b) any party may claim a trial by jury. Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.;

(c) the Superior Court may make orders consistent with Section 34-37-5(H) of the General Laws of Rhode Island and may also award (1) punitive damages and (2) such damages as the court deems just and proper.;

10) if the Commission, after investigation, determines that probable cause exists, it shall have the power to issue and cause to be served upon any person or respondent a complaint stating the charges in that respect;

11) the Commission's probable cause determination shall have the same meaning as reasonable cause as defined in the Fair Housing Act of 1968, as amended, Section 810(g)(1)& (2);

12) If none of the parties makes an election as provided above, a Commission attorney, acting as the Civil Prosecutor, shall either maintain the administrative action seeking appropriate relief for an aggrieved party and vindication of the public interest, or, if the complainant is represented by an attorney or proceeds pro se, participate in the administrative action on behalf of the public interest.

**EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
9 December 2011**

I. BUDGET

S = State/General Revenue; F = Federal (EEOC/HUD); T = Total

	FY 2012	FY 2011	FY 2012
	(Request)	(Passed)	(Passed)
S	1,204,098	1,214,446	1,154,038
F	301,532	161,769	301,532
T	1,505,630	1,376,215	1,455,570

On June 17, House Finance approved a budget allotting the Commission's full 14.5 FTEs for FY 2012. The General Assembly authorized the Commission budgets for FY 11 and FY 12 as indicated above.

The Commission's FY 12 Revised and FY 13 Proposed Budget Requests were submitted to the Governor, the State Budget Office and other designated officials on October 4. On November 18, I met with representatives of the State Budget Office and the Governor's Policy/Legal staff to discuss the Commission's FY 12 revised and FY 13 proposed budgets and answer questions regarding our budget submissions.

II. FEDERAL CONTRACTS

EEOC – For federal FY 2012 (beginning October 1, 2011), according to EEOC Project Director Marlene Toribio, we have closed 29 co-filed cases. Our formal contract with EEOC for FY 2012 has not yet been determined

HUD – For FY 11, according to HUD Project Director Angela Lovegrove, we took in 53 new housing charges, 50 of which were co-filed with HUD. Within this same time period, we processed 54 housing charges, 52 of which were co-filed with HUD.

For FY 12 (beginning July 1, 2011), we have taken in 17 new housing charges, 16 of which are co-filed with HUD. Within this same time period, we have processed 17 housing charges, 16 of which were co-filed with HUD.

III. PERSONNEL

No new information.

IV. OUTREACH – Refer to attached report

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with

individual investigative staff members on a monthly basis to monitor case production.

●Case Closures – Refer to attached report.

We ended FY 2011 ahead of the prior fiscal year's case processing rate. In FY 2010, we processed 402 cases; in FY 2011, we processed 422 cases (approx. 5% increase). For FY 2012 (as of November 30, 2011), we have processed 162 cases (compare to 174 cases in this same time period in FY 11).

●Aged Cases – Refer to attached report.

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 11 with 323 cases in inventory. As of 12/8/11, we had a total of 297 cases in inventory; 53 of those cases were pending assignment.

●Lease – The State Properties Committee met on September 13, 2011, and approved our 5-year lease extension. Frank Gaschen attended the meeting. The formal lease extension has now been executed by all parties. (Frank is now working with Capstone officials to identify facilities' issues for Capstone to address/remedy.)

●Performance Management Initiative – On May 3, I met with members of the Governor's Policy Staff and State Budget Office to discuss the Governor's Performance Management Initiative. As

follow-up to that meeting, I completed and submitted the Commission's response to a 20-question program performance survey on May 31. On August 10, I attended an introductory forum for state agency directors regarding the planned implementation of the Initiative. On November 18, I met with a representative of the Performance Management team to discuss appropriate performance measures for the Commission.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

AGED CASE REPORT*

(EEOC FY 2012)

DATE TOTAL CASES STAYED CASES TOTAL LESS STAYED

11/02 158

10/03 85

10/04 26

10/05 14

10/06 8

10/07 4

10/21/11 4 0 4

(3 = investigation,
1 = hearing/conciliation)

12/8/11 4 0 4

(3 = investigation,
1 = hearing/conciliation)

1/ /12 0

(= investigation,
= hearing/conciliation)

2/ /12 0

(= investigation,
= hearing/conciliation)

3/ /12 0

(= investigation,
= hearing/conciliation)

4/ /12 0

(= investigation,
= hearing/conciliation)

5/ /12 0

(= investigation,
= hearing/conciliation)

6/ /12 0

(= investigation,
= hearing/conciliation)

7/ /12 0

(= investigation,
= hearing/conciliation)

8/ /12 0

**(= investigation,
= hearing/conciliation)**

9/ /12

0

**(= investigation,
= hearing/conciliation)**

***Figures reflect open cases filed on or before September 30, 2007**

Aged case load reduced in EEOC FY 2012 by XX%

OUTREACH – FY 12

RI COMMISSION FOR HUMAN RIGHTS

**DATE TRAINER(S) TOPIC LOCATION/
GROUP NUMBER**

ATTENDING

**8/2/11 Vella-Wilkinson Distribution of Commission
Literature “National Night Out”, Oakland Beach**

**9/7/11 Christy Commission Overview; ADA issues Dunkin Donuts,
Broad St., Providence 5**

**9/14/11 Lovegrove Commission Information/Intern Recruitment
Community Service Opportunities Fair, Brown University**

9/21/11 Lovegrove

Rivera Fair Housing Warm Center Shelter, Westerly... 10

**9/22/11 Evora Commission Overview, “The Top Ten Things to Think
About When Representing LGBT Clients” RI Bar Association, LGBT**

and the Law Committee, Providence 20

11/3/11 Gaschen Fair Housing Act/ Reasonable Accommodations for Assistive Animals RI Bar Association, Providence 30

11/9/11 Gaschen Fair Housing Act/ Reasonable Accommodations for Assistive Animals RI Bar Association, Middletown 12

11/9/11 Evora

Hiatt Rhode Island for Community and Justice Community Service Awards Event Convention Center, Providence 200

11/20/11 Flanders Commission Overview/ Recruitment Job/Internship Fair (High school and college students), URI, North Kingston 55

11/29/11 Evora

Flanders

Christy Commission Overview/ Employment Discrimination, Part 1 YearUp, Providence 40

12/1/11 Flanders

Christy Commission Overview/ Employment Discrimination, Part 2 YearUp, Providence 40

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: December 9, 2011

Recent developments are in bold.

Aquidneck Island v. RICHR, et al.

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now. An offer of \$2500 was made by counsel to the plaintiff to settle all of the claims against Cardinale and his companies. The offer was not satisfactory.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. The case has been transferred to Judge Stern before whom the matter will be heard, sometime.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. On April 22, 2008, the complainant's attorney filed his brief. The Commission's Brief was filed on August 27, 2008. The Commission received the respondent's brief on December 5, 2008. In November 2010, the complainant filed a stipulation to assign the appeal for a written decision by the Superior Court. The appeal was assigned to Justice Netti Vogel.

BHDDH (MHRH) v. RICHR and the Estate of Dr. John Satti

BHDDH appealed the Commission decision that BHDDH retaliated against Dr. Satti and discriminated against him on the basis of his

age. BHDDH filed its Brief on August 7, 2008. On October 21, 2008, the Commission filed the administrative record. On January 14, 2009, the Commission filed its brief. The complainant's brief is pending; the complainant's attorney has indicated that she is working on it.

Bucci v. Hurd Buick Pontiac GMC Truck LLC et al

The Commission has agreed to consider filing an amicus brief with the Rhode Island Supreme Court with respect to this case in which the Superior Court granted summary judgment to the employer even though the employer had given inconsistent reasons for the plaintiff's termination and there was evidence that impaired the employer's credibility. The appeal has been filed and a briefing schedule is expected shortly. Counsel has received copies of the parties' briefs below. Legal Extern, Amelia Kohli, has worked on summarizing the facts and the legal issues.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. In November, 2007, Judge Savage remanded the Commission Decision for the Commission to determine how the Commission would evaluate the evidence, given the conclusions reached in her decision. Judge Savage also asked the Commission to re-assess its Order. After numerous efforts to reach a resolution between the parties, and submissions by the parties in the winter and spring of 2009, the case

was taken under consideration by the Commission. A decision in the case issued on March 12, 2010. On April 14, 2010, the respondents appealed. The administrative record was filed in early July, 2010. Justice Gale assigned the new appeal to Justice Savage, in accordance with her order on the previous appeal. The Town filed its brief on February 18, 2011. The Commission filed its brief on April 8, 2011. Mrs. Gaffney's attorney decided that he would not file a separate brief; he filed a statement indicating that Mrs. Gaffney supports the arguments made by the Commission. The Town filed its reply brief on May 26, 2011. Mrs. Gaffney's counsel wrote Justice Savage to tell her that the case is ready for review.

J.J. Gregory and Sons v. RICHR and Brenda Zeigler

The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons filed an appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the record on February 14, 2008. Respondent filed its brief on January 5, 2009. The complainant filed her brief on January 29, 2009. The Commission filed its brief on February 9, 2009.

On February 10, 2009, the appeal was assigned to Judge Judith Savage for decision. On March 10, 2011, Justice Savage issued a decision upholding the Commission's finding of discrimination. The complainant's attorney has drafted an Order for Justice Savage. He may file a motion for supplemental attorney's fees with the

Commission.

Laboy v. Stat Health Services, et al.

Counsel is trying to locate respondent's officers to bring a suit to enforce the Commission Decision. Corporate charter revoked and the individual defendant cannot be located.

Mc Garry v. Marilyn Pielech (in her capacity as Treasurer and Finance Director of the Town of Cumberland) et al.

This age discrimination and retaliation case was heard before a jury in the Superior Court and the jury found for the plaintiff. The Superior Court Judge granted a judgment as a matter of law for the defendants, overturning the jury's verdict. In his decision, the Judge held that there was insufficient evidence to support the jury verdict. In particular, he determined that the complainant should not have been able to rely on an adverse inference against the defendants which had been based on the fact that interview records in the defendants' control had gone missing. The Judge set a higher standard for use of an adverse inference in these circumstances and required some extrinsic evidence that the missing records would have supported the plaintiff's claim of age discrimination. The parties have agreed that the Commission may file an amicus brief with the Rhode Island Supreme Court by December 16 in support of plaintiff's appeal of the Superior Court judge's decision. The Commission's amicus brief will focus primarily on the importance of such interview records to a determination of discrimination and the logic of drawing

an adverse inference when such records are missing.

RICHR (Lovegrove) v. Escolastico

A Rhode Island judgment was obtained and sent to a Florida lawyer for collection. Counsel is waiting for Ms. Lovegrove to forward funds to the Florida counsel to begin Supplementary Proceedings against Mr. Escolastico.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, et al. Motions for Entry of Default were granted. An offer of \$2500 was made to the plaintiff to settle all of the claims against Cardinale. The offer was not satisfactory.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against defendants. Motions to compel will be filed. An offer of \$2500 was made to the plaintiff to settle all of the claims against Cardinale. The offer was not satisfactory.

RICHR (Morin) v. Teofilo Silva, et al.

A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.

RICHR (Robinson) v. Geruso, Flagship Management, et al.

After a finding of probable cause, a complaint against six defendants was filed in Superior Court alleging racial discrimination in a failure to rent case. The case was settled and HUD notified. RICHR will monitor the case for three years. The second report, due March 19, 2011, was received.

RICHR (Sigmon) v. Irwin, et al.

After a finding of probable cause, a complaint against two defendants was filed in Newport County Superior Court alleging a refusal to grant a reasonable accommodation to a pet policy because of a disability was discriminatory. The case was “settled” but since the parties could not agree on the language of the Negotiated Settlement, suit was filed. Respondent was to meet with his attorney yesterday to see if case could be settled.

RICHR (Wright) v. New Canonchet Cliffs, et al.

The Commission found probable cause and the respondents elected in this housing case that alleges failure to give a reasonable accommodation regarding a support animal (the respondents claimed that the dog was too big for a pet). Suit was filed in Washington County Superior Court. Discovery will commence shortly.

RICHR v. Shear Pleasure

This case was filed in the Providence County Superior Court to enforce a negotiated settlement and the defendant was defaulted.

Execution was returned unserved as sheriff could not locate the officer of the defendant.

RICHR (Zeigler) v. Laura Sitrin, Finance Dir. of Newport

The case is resolved. The Commission will annually monitor City training. Training was completed for 2011.

T.G.I. Fridays (Carlson Restaurants Worldwide) v. Selvidio and Évora

The respondent has appealed the recent Commission decision and order in favor of Mr. Selvidio. It has also moved for a stay of the Commission Order. No date has been set yet for the hearing. The Commission is waiting for reimbursement of copy costs before filing the administrative record. The complainant has filed a Motion for Enforcement with the Commission. The respondents have not yet responded to the Motion.